

August 10, 1998

D.T.E. 98-84

Investigation by the Department of Telecommunications and Energy, on its own motion, commencing a Notice of Inquiry and Rulemaking, pursuant to M.G.L. c. 164, §§, 69H, 69I, 76C, and 220 C.M.R. §§ 2.00 et seq., into (1) rescinding 220 C.M.R. §§ 10.00 et seq., and (2) exempting electric companies from any or all of the provisions of G.L. c. 164, § 69I.

ORDER COMMENCING NOTICE OF INQUIRY AND RULEMAKING

I. INTRODUCTION

On November 25, 1997, the Governor signed into law Chapter 164 of the Acts of 1997, entitled, "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein" ("Restructuring Act"). The Restructuring Act introduces retail competition to the generation sector of the electric industry and consequently relieves electric companies of their obligation to plan for and serve the generation needs of all customers on a monopoly basis. This Notice opens an inquiry by the Department of Telecommunications and Energy ("Department") into issues pertinent to forecast and supply planning by electric companies in light of the Restructuring Act, and a rulemaking by the Department to rescind 220 C.M.R. §§ 10.00 et seq.

Currently, every electric company under the jurisdiction of the Department is required to file a ten-year forecast of electric power needs and requirements for its market area every two years ("long-range forecast"). G.L. c. 164, § 69I. However, G.L. c. 164, § 69I, as amended by the Restructuring Act, authorizes the Department "to exempt any electric ... company from any or all provisions of [G.L. c. 164, § 69I] upon a determination by the [D]epartment and the [Energy Facilities] [S]iting [B]oard, after notice and hearing, that an alternative process is in the public interest."

The long-range forecasts of electric companies currently are reviewed by the Department pursuant to the Rules Governing the Procedure By Which Additional Resources are Planned, Solicited, and Procured by Certain Investor-Owned Electric Companies Operating in the Commonwealth. Integrated Resource Planning Rulemaking, D.P.U. 94-162 (1995); 220 C.M.R. §§ 10.00 et seq. ("IRP Rules").¹ The IRP Rules address forecasts of electricity demand and supply; evaluations of resource need and potential; requests for resource proposals; solicitations and evaluations of alternative project proposals; and plans to meet additional resource requirements as they apply to the rates, terms, and conditions of contracts between resource suppliers and electric companies. 220 C.M.R. § 10.01(2).

Pursuant to the Restructuring Act, electric companies are no longer responsible for forecasting, planning, soliciting, and procuring long-term electricity supplies for their

¹ These regulations superseded earlier rules promulgated in IRM Rulemaking, D.P.U. 89-239 (1990).

customers except for standard offer and default service.² See G.L. c. 164, §§ 1A through 1H. This change in electric company responsibilities raises questions as to whether demand and supply planning reviews such as those prescribed by G.L. c. 164, § 69I and the IRP Rules remain necessary. Consequently, the Department is requesting comments as to whether the Department should (1) rescind 220 C.M.R. §§ 10.00 et seq.; and (2) exempt electric companies from any or all of the requirements of G.L. c. 164, § 69I.

II. DEPARTMENT PROPOSAL

A. Rescinding 220 C.M.R. §§ 10.00 et seq.

The Department has been engaged in a multi-year effort to replace traditional electric company regulation with a system that provides for competition in the generation sector in Massachusetts. Our historic approach to regulating generation-related costs focused on cost accounting and planning issues. Over the years, the Department developed a comprehensive integrated resource planning ("IRP") framework governing the procurement and cost recovery associated with resources to meet electric customers' electricity needs. See D.P.U. 89-239 (1990); D.P.U. 94-162 (1995). This framework provided for a regular, two-year planning cycle for all electric companies, encompassing several distinct phases, including forecasting, need determination, negotiation, competitive solicitation, and contract approval. With the passage of the Restructuring Act in November 1997, introducing competition and retail access to the generation sector of the electric industry, this regulatory framework no longer appears appropriate.

Pursuant to the Restructuring Act, the Department's role will shift from reviewing cost accounting and planning issues in the generation sector to assuring full and fair competition through the enforcement of fair and impartial rules. Whereas prior statutes created a system of rights and obligations for private investor-owned utilities, electric companies will no longer be in the position of, or responsible for, planning for all customers' needs on a monopoly basis. There will no longer be vertically integrated electric utility monopolies engaged in generation, transmission and distribution of electric power. Instead, the electric industry will feature a competitive generation market driven by customer choice among providers of generation services. A market framework based on competition and customer choice, as provided for in the Restructuring Act, will allow customers' decisions to determine the composition of the power supply mix and will mean that the economic consequences of building too many power plants will be borne directly by investors, rather than ratepayers. Given the protections provided by the Restructuring Act and the Department's regulations to ensure competition and

² The Restructuring Act also mandates levels of funding for demand-side management ("DSM") and gives the Massachusetts Division of Energy Resources new responsibilities for DSM oversight and coordination. See G.L. c. 25A, §11G.

environmental benefits, the Department considers eliminating IRP the best way to harness competitive forces productively rather than thwarting or duplicating them. The Department therefore proposes to rescind 220 C.M.R. §§ 10.00 et seq.

B. Alternative Process

For the same reasons, the Department seeks to exempt electric companies from their obligation to file biennial long-range forecasts pursuant to G.L. c. 164, § 69I. If the IRP Rules are rescinded but the § 69I obligations remain in place, electric companies will still be required to file a long-range forecast and supply plan every two years for review by the Department. In addition, any electric utility filing a transmission facility proposal with the Energy Facilities Siting Board ("Siting Board") pursuant to G.L. c. 164, § 69J will be required to demonstrate that the proposal is consistent with an approved long-range forecast. Thus, in order to eliminate the long-range forecast requirement, the Department must exempt electric companies from the provisions of § 69I.

The Restructuring Act provides that any utility may be exempted from any or all provisions of § 69I "upon a determination by the [D]epartment and the [Energy Facilities][S]iting [B]oard, after notice and hearing, that an alternative process is in the public interest." The Department, therefore, seeks comments to help develop an alternative process, or a set of alternative processes, that would allow the Department and the Siting Board to fulfill their duties under the Restructuring Act without conducting the detailed biennial review of electric utility forecast and supply plans required by § 69I.³ This process should encompass the following features of § 69I:

- * Promotion of cost-effective demand-side management ("DSM");
- * Assessment of distribution-related reliability issues; and
- * Advance notification of developing transmission constraints.

Further, the alternative process should provide sufficient information to allow the Department to develop an annual analysis of the reliability and diversity of electric power for the General Court, as required by G.L. c. 164, § 69I.⁴

³ As discussed in more detail in Section III, below, the Department anticipates that the Siting Board will open a companion proceeding to determine whether an alternative process is in the public interest.

⁴ The Department notes that the alternative process also should provide sufficient information to allow the Siting Board to evaluate the need for transmission facilities proposed pursuant to G.L. c. 164, § 69J, when the need for such facilities is based on
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These issues can be addressed outside the long-range forecast framework established in § 69I. The Restructuring Act has already established an alternative process for promoting cost-effective DSM by dedicating a certain percentage of distribution system rates to fund DSM programs and requiring the Department to determine the cost-effectiveness of proposed programs. G.L. c. 25, § 19; G.L. c. 25A § 11G. The Department will consider distribution system reliability in the context of a generic inquiry into distribution service quality and individual performance based distribution rate cases. The Department expects to draw on information available from ISO/New England to develop our analysis of the reliability and diversity of electric power.

In order to provide notice of developing transmission constraints, the Department proposes that each electric utility be required to file with the Department and the Siting Board an annual report similar to that required by Section 1 of EFSB Administrative Bulletin 78-2, but focused exclusively on emerging transmission constraints. A copy of the appropriate section of Administrative Bulletin 78-2 is attached to this notice. Finally, while the Department defers to the Siting Board with respect to its review of transmission facilities, it seems likely that all the information needed to evaluate the need for a proposed transmission facility could be developed during the course of the Siting Board's review of that facility.

III. PUBLIC HEARING AND COMMENTS

The Department will conduct a Public hearing with respect to our proposals to: (1) rescind 220 C.M.R. §§ 10.00 et seq and (2) exempt electric companies from the requirements of G.L. c. 164, § 69I, as they related to the filing of long-range forecasts, on September 14, 1998, beginning at 10:00 a.m., at the Department of Telecommunications and Energy, 100 Cambridge Street, 12th Floor, Boston MA 02202. As noted above, the Department anticipates that the Siting Board shortly will open a companion proceeding, with the purpose of determining whether there is an alternative process to the filing of electric company forecast and supply plans pursuant to G.L. c. 164, § 69I which is in the public interest. If the Siting Board agrees, the September 14, 1998 Public hearing can be a joint hearing by the Department and the Siting Board in this docket and in the related Siting Board proceeding.

Any person who wishes to comment on these proposals may do so at the time and place noted above or submit written comments to the Department prior to the public hearing. In addition to general comments on Department's proposals to rescind 220 C.M.R. §§ 10.00 et seq. and to exempt electric companies from the provisions of G.L. c. 164, § 69I, the

⁴(...continued)

projected load growth. The Department anticipates that the Siting Board will address this matter in its own Notice of Inquiry.

Department seeks comments on the following questions:

1. Will information generally available from ISO/New England be sufficient to allow the Department to report to the General Court, pursuant to G.L. c. 164, § 69I, on "the reliability and diversity of electric power"? If not, what other information will the Department need to collect, and how should it be collected?
2. What changes need to be made to Administrative Bulletin 78-2 in order to: (1) focus it on developing transmission needs, rather than supply needs; and (2) ensure that the Department is aware of emerging inter-utility and inter-state transmission needs?

Written comments on these proposals must be filed no later than September 4, 1998 and may not exceed 20 pages in length. Commenters must, whenever possible, file comments on a 3.5" diskette formatted in WordPerfect 5.1 or higher. One original and nine copies of all comments should be filed with Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, 100 Cambridge Street, 12th Floor, Boston MA, 02202.

By order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner